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In the

Supreme Court of the United States

October Term, 1951

No. 339

RAY L. BATMAN, EDITH B. BATMAN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

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No. .....

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

SUMMARY STATEMENT OF THE MATTER INVOLVED

On December 31, 1943, Gerald L. Batman, the minor son of petitioners, was the owner of cattle of a value of $22,711.00, and wheat of a value of $700.00 and 160 acres of land. (R. 61.) These assets were contributed by said son to a family partnership composed of himself and his father. (R. 56, 61.) During the calendar years 1944 and 1945, Gerald L. Batman contributed services to the business of said partnership. (R. 61, 62, 95, 96.) Admittedly the capital and services contributed by Gerald L. Batman

to the business of the partnership was productive of a part of the income of said partnership for the calendar years 1944 and 1945. (R. 61, 62.) The Commissioner determined said family partnership to be invalid and taxed all of the income therefrom to petitioners. (R. 52.) The Tax Court, though recognizing that Gerald L. Batman contributed income-producing services and capital to said partnership, refused to disturb the Commissioner's determination in most respects on the grounds that petitioners did not prove with precision the exact amount of income which arose by reason of said capital and service contributions. (R. 60, 62.) The Court of Appeals for the Fifth Circuit affirmed. (R. 142.)

JURISDICTIONAL STATEMENT

The judgment sought to be reviewed is the judgment of the United States Court of Appeals for the Fifth Circuit. Said judgment was rendered on the 22nd day of May, 1951, and became final on the 7th day of August, 1951, upon the denial of petitioners' motion for rehearing. (R. 142, 145.) The Judgment of the Court of Appeals for the Fifth Circuit affirmed a decision of the Tax Court on a matter involving the taxation of income within the meaning of the Revenue Act of 1938 as amended. [*Internal Revenue Code Sections 22 (a), 181,* and *182, 26 U. S. C. A. Sections 22 (a), 181 and 182.*] (R. 131-141.)

The jurisdiction of this Court is invoked under *Section 240a* of the Judicial Code as amended. *(28 U. S. C. A. Section 347.)*

It is urged that this Court exercise its discretion to re-

view because of the importance of the question involved to the administration and interpretation of the Revenue laws and because of conflict in principle of the decision below with that of decisions by this Court and by other courts of appeal.

The jurisdiction of this Court to review by certiorari a judgment of a court of appeals on the grounds urged was sustained in *Helvering v. Horst, 311 U. S. 112, 61 S. Ct. 144.*

QUESTION PRESENTED

If the determination of the Commissioner is admittedly erroneous, will said determination nevertheless be sustained if the aggrieved taxpayer failed to show with exactness the extent of the Commissioner's error?

REASONS RELIED ON FOR ALLOWANCE OF WRIT

I.

That a person is taxable upon the product of his service or capital is a fundamental rule of modern tax law. This fundamental rule is not to be voided when the product of capital or services flows into the stream of income arising from an unrecognized partnership. The Tax Court and Court of Appeals, however, held that the income arising from the services and capital of Gerald L. Batman was the income of petitioners; those courts paid lip service to the fundamental principles of taxation above stated, but by imposing upon the petitioners an unreasonable burden of proof the said fundamental principles were in effect denied.

II.

The decision of the Tax Court in the instant case as affirmed by the Court of Appeals for the Fifth Circuit conflicts with the decision of this Court in *Helvering v. Taylor, 293 U. S. 507*, in which it was decided that when a taxpayer shows the Commissioner's determination to be arbitrary and excessive it does not then fall upon the taxpayer to show the amount of tax which he does owe.

The decision of the Court of Appeals for the Fifth Circuit in the instant case is in conflict with the decision of the Court of Appeals for the Tenth Circuit in *Federal National Bank of Shawnee, Oklahoma v. Commissioner, 180 F. 2d 494*, wherein that court stated the burden of proof is on the taxpayer to show the Commissioner's determination to be invalid but to do so he need only show said determination to be excessive; that after finding the Commissioner's determination to be excessive and therefore invalid, the Court may upon proper application (of the Commissioner) hear further evidence as to proper tax liability of the parties involved.

The decision of the Court of Appeals for the Fifth Circuit in this case is in conflict with the decision of the Court of Appeals for the Eighth Circuit in *Johnson v. Commissioner, 88 F. 2d 952* wherein it was held that income shown to be in part community was erroneously taxed in its entirety to the husband even though the husband failed to show the exact amount of community income which was taxed to him in error.

III.

During the present era of high taxes, the Commissioner of Internal Revenue is seeking every possible means to increase the public revenue; thousands of Internal Revenue Agents are combing the countryside in an effort to ferret out every tax dollar. This zealous administration of the tax law, which is often unreasoning, has caused many taxpayers to resort to the courts in an effort to find relief from the Commissioner's interpretation of the Revenue laws. The Tax Court has found its docket overflowing with cases filed by the American taxpayer. At last report some six thousand tax cases were then crowded upon that court for consideration. Such pressure tends to rush the work of the Tax Court and in many instances a taxpayer's just plea for relief is brushed aside with the comment that the taxpayer has not sustained his burden of proof.

Since 1935 when this Court decided *Helvering v. Taylor, supra*, many court decisions have come down which have caused considerable confusion as to the authority and effect of *Helvering v. Taylor*.[1] In every case which shall come before the Tax Court there now exists the confusing problem of accurately defining the taxpayer's burden of proof. When the taxpayer's burden of proof becomes too difficult, the substantive rights of the taxpayers are denied.

In the interest of effectively preserving the fundamental rules of taxation as outlined in *Lucas v. Earl, 281 U. S. 111;*

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1 Cases illustrating this confusion are: *Barth v. Commissioner, 35 B. T. A. 546* at *551; McLean v. Commissioner, 41 B. T. A. 1266* at *1270; Forest Glen Creamery Co. v. Commissioner, 41 B. T. A. 89; Thorez v. Commissioner, 5 T. C. 60* at *76* and *87; Anthony P. Miller, Inc. v. Commissioner, 7 T. C. 729* at *755; Toledo Blade Co. v. Commissioner, 11 T. C. 1079* at *1087; Hughes v. Commissioner, 104 F. 2d 144; B. F. Sturtevant Co. v. Commissioner, 75 F. 2d 316.*

Helvering v. Horst, supra; Helvering v. Clifford, 309 U. S. 331; and *Commissioner v. Culbertson, 337 U. S. 733,* in the interest of assuring uniformity in the administration of the tax laws and in the interest of clearly defining and illustrating the burden of proof required of a taxpayer in litigation before the Tax Court, it is submitted that this Court should review the decision herein of the Court of Appeals.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Fifth Circuit, commanding said court to certify and sent to this Court a full and complete transcript of the record and of the proceedings of said Circuit Court had in the case numbered and entitled on its docket No. 13,386, *Ray L. Batman, Edith B. Batman, Petitioners v. Commissioner of Internal Revenue, Respondent,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by the Court and for such further relief as to this Court may seem proper.

Respectfully submitted,

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In the

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No. .....

RAY L. BATMAN, EDITH B. BATMAN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS OF THE COURTS BELOW

The memorandum opinion of the Tax Court of the United States is not reported but appears at pages 52-74 of the Record. The opinion of the United States Court of Appeals for the Fifth Circuit, rendered on May 22, 1951, is reported at 189 F. 2d 107 and appears at pages 131-141 of the Record. Petitioners' petition for rehearing in the Court of Appeals for the Fifth Circuit was denied August 7, 1951. The order denying said petition appears at page 145 of the Record.

JURISDICTION

The jurisdiction of this Court is invoked under *Section 240a* of the Judicial Code as amended. *(28 U. S. C. A. Section 347.)*

It is urged that this Court exercise its discretion to review because of the importance of the question involved in the administration and interpretation of the Revenue laws and because of conflict in principle of the decision below with that of decisions by this Court and by other courts of appeal.

STATUTE INVOLVED

INTERNAL REVENUE CODE:

> Sec. 22. GROSS INCOME.
>
> (a) General Definition—"Gross Income" includes gains, profits, and income * * * of whatever kind and in whatever form paid, or from * * * trades, business, commerce, or sales or dealings in property, whether real or personal growing out of the ownership or use of or interest in such property; * * *. (26 U. S. C. A. 22.)

STATEMENT

A statement of the case was made in the preceding petition for writ of certiorari under the heading "Summary Statement of the Matter Involved" which is hereby adopted and made a part of this brief.

ERROR RELIED UPON

The United States Court of Appeals for the Fifth Circuit erred in sustaining the determination of the Commissioner when that determination was admittedly arbitrary and excessive.

ARGUMENT

The Commissioner of Internal Revenue has the right to review a taxpayer's return and all data which may reflect

upon the proper income of a taxpayer. After having reviewed the return, the Commissioner then makes a determination of the income tax which he, in his opinion, believes the taxpayer owes. After that determination is made the taxpayer must pay the tax which the Commissioner determines that he owes or appeal to the Tax Court of the United States. The Tax Court of the United States has promulgated its *Rules of Practice*, Number 32, to the effect that the burden of proof (except in certain cases not here involved) shall be upon the petitioner. No definition of "burden of proof" is given in the Tax Court's *Rules of Practice.*

To the taxpayer seeking justice, the exact burden imposed on him in a Tax Court proceeding is highly important. If the Commissioner's determination can be overturned only in theory, there is no practical reason for contesting that determination.

In the case at bar the petitioners were members of a family partnership in which petitioners' son contributed his own income-producing services and capital. The Commissioner determined the partnership to be of no effect for tax purposes and then determined that all of the income of said partnership was the income of petitioners.

To sustain what the petitioners believed to be their burden of proof under this Court's decision in *Helvering v. Taylor, 293 U. S. 507*, and as later announced in *Commissioner v. Culbertson, 337 U. S. 733*, the petitioners attempted to show: first, that a part of the income of the partnership was produced by the capital and services of

was impossible to determine the taxpayer's basis in the policy. The taxpayer showed that the Commissioner's determination was erroneous but did not furnish proof from which could be determined the exact amount of the policy which should have been included in gross income. The Tax Court sustained the Commissioner's determination. The Court of Appeals for the Tenth Circuit reversed and stated:

> The burden of proof was on the taxpayer to show the Commissioner's determination was invalid, but to meet that burden, it was sufficient for the taxpayer to show that the determination was excessive and invalid. The taxpayer was not required also to prove that he owed no tax or the correct amount of tax he did owe."

The decision of the Tax Court as affirmed by the Court of Appeals for the Fifth Circuit is in conflict with the decision of the Court of Appeals for the Eighth Circuit in *Johnson v. Commissioner, 88 F. 2d 952.*

In that case the petitioner and his wife had been residents of Texas. While in Texas certain properties had been acquired which were concededly community property. Thereafter, petitioner and his wife moved to Missouri and using the Community assets acquired in Texas the petitioner engaged in business in Missouri and elsewhere. In the years in question, petitioner, a Missouri resident, reported one-half of the income of the marital partnership, the other one-half was reported by the wife. The Commissioner determined that all of the income was taxable to the husband. At the trial before the Board of Tax Appeals

the petitioner showed that some part of the income taxed to him was actually a product of the community, one-half of which was vested in the wife. The petitioner did not introduce evidence from which it could be determined how much of the income taxed to him was the income of his wife. The Board of Tax Appeals disregarded the marital partnership theory and sustained the determination of the Commissioner in its entirety.

On appeal, the Court of Appeals recognized that a part of the income in question necessarily belonged to the wife for she was the owner of a part of the property producing the same. The Court of Appeals agreed with the Tax Court that the wife was not the owner of one-half of the income as contended, that no partnership existed between the husband and wife and, therefore, the husband necessarily was taxable on over one-half of the income in question. The Court of Appeals then remanded the case to the Board of Tax Appeals with directions to afford the taxpayer an opportunity to produce evidence to establish what portion of the income was taxable to him and what portion was taxable to his wife in this respect the court stated:

> "the burden was upon the taxpayer to establish error in the Commissioner's determination by showing that some portion of the income received by him during the taxable years in question was income of his wife which was not taxable to him."

CONCLUSION

The conflict of the decision of the Court of Appeals for the Fifth Circuit in the instant case with the decisions cited above is apparent. To allow the opinion of the Court

of Appeals to stand is to permit Rule 32 of the Tax Court to void the fundamental principles of taxation announced in *Lucas v. Earl; Helvering v. Horst; Helvering v. Clifford;* and *Commissioner v. Culbertson.**

The expanded requirement of our government for high taxes makes it doubly important that all taxpayers have the same rights and the same burdens else our system of taxation is indiscriminate confiscation of property. Unless it is clearly defined and the definition rigidly adhered to "burden of proof" can place the taxpayer at the mercy of the Commissioner.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a writ of certiorari and thereafter reviewing and reversing said decision.

Respectfully submitted,

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* *Lucas v. Earl, 281 U. S. 111;*
Helvering v. Horst, 311 U. S. 112;
Helvering v. Clifford, 309 U. S. 331;
Commissioner v. Culbertson, 337 U. S. 733.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 339

RAY L. BATMAN, EDITH B. BATMAN, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 52–74) is not reported. The opinion of the Court of Appeals (R. 130–138) is reported at 189 F. 2d 107.

JURISDICTION

The judgment of the Court of Appeals was entered May 22, 1951. (R. 138–139.) Taxpayer's petition for rehearing was denied August 7, 1951. (R. 142.) The petition for a writ of certiorari was filed September 20, 1951. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the court below erred in affirming the Tax Court's determination that the evidence was insufficient to show what portion if any of the income derived by taxpayers was attributable to sporadic services of their son and to sales of cattle owned by the son, and that accordingly their contention that income derived from these sources should be excluded from their income must be rejected.

STATUTE AND REGULATIONS INVOLVED

These appear in the Appendix, *infra,* pp. 11–12.

STATEMENT

The material facts as found by the Tax Court (R. 52–62) may be summarized as follows:

The taxpayers, a husband and wife residing in Texas, filed their income tax returns for 1944 and 1945 (the taxable years) on a community property basis. Their son, Gerald, was fourteen years old in 1944 and was regularly attending public school. (R. 52–53, 56). For convenience the husband is hereafter referred to as the taxpayer.

Since 1923 taxpayer has been operating his own farm in Texas. By the end of 1943 he owned approximately 2,336 acres of Texas farm and ranch land, cattle inventory valued at $75,000, and wheat inventory valued at $7,000. In 1944 and 1945 he owned approximately 4,076 acres in Texas, and 2,600 acres in Kansas. (R. 53.)

Beginning in 1941 and during the years 1942 and 1943, Gerald worked on his father's farm doing various tasks. Since Gerald was attending school his work was confined to week ends, summer vacations and other vacation periods. During the harvest periods he operated a tractor and performed such other tasks as he was physically capable of. At certain seasons of the year he worked nights and Saturdays and Sundays. He was never paid any wages for this work. (R. 54).

In April of 1942, Gerald purchased 176 acres of land, the deed to which was taken in his name; the purchase was financed by a note in the amount of $2,300 signed by Gerald and endorsed by taxpayer. During the years 1944 and 1945 this property was rented to a tenant and rents of $700.00 were received in each year. Also, between 1941 and 1943, Gerald acquired a number of head of cattle, some by gift from the taxpayer and some by purchase, using the proceeds of two additional notes, the largest of which was also endorsed by the taxpayer. In his tax return for 1943, Gerald reported an inventory of cattle at the end of that year of $22,711.00. These cattle were pastured on taxpayer's land and were shipped and sold with taxpayer's cattle (R. 54, 60–1).

In January, 1944, taxpayer purportedly entered into an oral partnership agreement with Gerald by which it was agreed that they were to combine ranching and farming operations and each was to contribute the use of his land retain-

ing the ownership of the fee. Taxpayer was to receive two-thirds of the profits and Gerald one-third. At this time Gerald was in his fourteenth year and was in regular attendance at the public school (R. 56).

In 1944, a partnership income tax return was filed reporting net income of $35,397.20, and stating that taxpayer's share was $23,598.13, and Gerald's share was $11,799.07. In 1945 a partnership income tax return was filed reporting net income of $56,493.77, and stating that taxpayer's share was $37,662.51 and Gerald's share was $18,831.26. In his income tax returns for 1944 and 1945 taxpayer did not report as community income the shares of the profits ascribed to Gerald. The Commissioner determined that no valid partnership for income tax purposes existed between taxpayer and his minor son, Gerald, and added to the community income the shares ascribed to Gerald. (R. 58.)

Before the Tax Court taxpayer contended that a valid partnership for tax purposes existed between him and his son, and that therefore the one-third share of the business income allocated to the son as a partner was excludible from taxpayer's income. (R. 58.) In the alternative, taxpayer contended that there should be excluded from his income so much of the business income as represented the reasonable value of the son's services, the fair rental value of the land conveyed to the son and used in the business, and

gains from sales of cattle conveyed to the son and sold in the business. (R. 60–61.) The Tax Court found from all the evidence that a bona fide partnership did not exist. (R. 58–60.) It found that $700 of the income in question was allocable to the son as rental for the land acquired in his name. (R. 61.) It further found that there was insufficient evidence from which it could make a finding as to the value of the son's services or as to profits realized from sales of cattle conveyed to the son. (R. 61–62.) The Tax Court accordingly sustained the Commissioner's determination that no partnership existed for tax purposes, and, with the exception of $700 above noted, sustained his determination that all the income ascribed to the son was includible in taxpayer's income. (R. 62.) The Court of Appeals affirmed. (R. 130–138.)

ARGUMENT

1. On the principal question argued below—whether the claimed family partnership is entitled to tax recognition—the decision of the Court of Appeals is in complete accord with the principles laid down in *Commisioner* v. *Culbertson,* 337 U. S. 733; *Commissioner* v. *Tower,* 327 U. S. 280; and *Lusthaus* v. *Commissioner,* 327 U. S. 293. Petitioners do not contend otherwise. Their contention is the narrow one that, having rejected their primary position, the Tax Court and the court below erred in failing to attribute to petitioners' minor son certain income

claimed to be derived from the son's capital and services.[1] This contention is erected upon the hypothesis that the Tax Court "refused to disturb the Commissioner's determination," notwithstanding that a portion of the income in question was attributable to the son's capital and services. (Pet. 1–2.) There is no warrant for such charge. In the first place, the Tax Court did disturb the Commissioner's determination; it held (contrary to the Commissioner's determination that all the income ascribed to the son as a partner was includible in taxpayer's income) that a portion of the income represented rent attributable to the son's capital and should be excluded from taxpayer's income. (R. 61.) Secondly, while the Tax Court refused to exclude any portion on account of the son's sporadic services and of sales of cattle owned by him, it did so because there was insufficient evidence from which it could make a finding as to the value of such services, or the number of cattle sold or the profits, if any, from such sales. (R. 61–62.) In the words of the court below (R. 138)—

[1] Petitioners did not seriously press this contention in the Tax Court. As that court stated (R. 61):

"Although petitioner makes these alternative assignments of error [relating to the value of capital and services supplied by Gerald] in his petition, he does not argue them in his brief. However, he does not expressly state that he has abandoned them. We shall, therefore, treat them as still pending."

> On the subsidiary issue, the failure to attribute to Gerald, rather than to petitioners, the earnings of himself and his property, we are also of the opinion that, for the reasons given by the tax court, that there was no basis in the evidence for determining the amount of the income which should be allocated to Gerald as earned by him or should be allowed to the petitioners as deductions for amounts paid to him as services, the ruling was right. The burden was upon the petitioners to establish their right to this alternative relief. They took no steps to recognize or meet this burden by showing what amount was due him, if any, for the sporadic work he did for the family unit, and particularly they took no steps to show that he worked under an agreement for pay. Instead, their whole insistence was upon the contrary theory, that there was a partnership, * * *
>
> In these circumstances, the court was clearly right in declaring that the record furnished no basis for awarding alternative relief beyond the $700 rental which it did award him.

Nothing in the taxing statute or elsewhere warrants taxpayer's assumption, implicit in his version of the question presented (Pet. 3), that the Tax Court is obliged either to sustain the Commissioner's determination in toto or else to reject it in toto. The Tax Court was of course required to reduce the Commissioner's deficiency deter-

mination to the extent that the evidence showed it to be excessive, and it did so. It was not required, as taxpayer supposes, to expunge the deficiency in its entirety.

2. Taxpayer's assertion of conflict (Pet. 4–5, Br. 10–13) with *Helvering* v. *Taylor,* 293 U. S. 507, and like cases, is without substance. In the *Taylor* case, this Court refused to approve an absolute rule that, where the Commissioner's determination was shown to be clearly excessive, the Court of Appeals could nevertheless not remand the cause to the Tax Court for receipt of further evidence as to the correct amount of tax. "On the facts shown by the taxpayer in this case" (293 U. S. at 515) it held that the Court of Appeals, in remanding the case, had not improperly exercised its power to affirm, modify, or reverse "with or without remanding the case for a rehearing, as justice may require" (26 U. S. C. 1141 (c) (1)). The other cases cited by petitioner similarly held that on the particular facts there presented a remand was appropriate in the interest of justice. These cases do not detract from the general rule that the taxpayer is required "to show not only that the Commissioner is wrong, but also to produce evidence from which a proper determination may be made." 9 Mertens, *Law of Federal Income Taxation,* p. 286; see *id.* 290. Indeed, even apart from the usual rules as to burden of proof in tax cases, the obliga-

tion to come forward with evidence plainly rested on the taxpayer here. The income from farming operations conducted by taxpayer was presumptively attributable to him except to the extent that he might show that a portion of it should be excluded as attributable to his son. Moreover, not only was he responsible for commingling his own operations and whatever activities might be attributable to his son, but the evidence as to the respective scope of their activities was peculiarly within his knowledge.

In these circumstances, there was clearly no reason why the taxpayer should, after appeal, be afforded an opportunity to remedy the deficiencies in his original proof. Taxpayer was afforded full opportunity to meet the burden of proving his principal contention that he and his son were bona fide partners for tax purposes, as well as his alternative contention that a portion of the income in question was attributable to the son's capital and services. On the basis of all the evidence the Tax Court found that no valid partnership existed for tax purposes, the Court of Appeals agreed, and taxpayer does not and cannot challenge that finding here. As for his alternative contention, the evidence showed that a portion of the income in question was attributable to the son's capital, and the Tax Court so found and reduced the Commissioner's as-

serted deficiency accordingly. In no other respect, however, did the evidence show the Commissioner's deficiency determination to be excessive. While some minor part-time services were rendered by the son, and the Tax Court so found (R. 54, 61–62), it also found that there was insufficient evidence from which it could make a finding as to their value (R. 62). Indeed, as the court below pointed out (R. 138), taxpayer "took no steps" to prove their value,[2] but relied rather upon the partnership theory. Under the circumstances, taxpayer is hardly in a position to insist that the Commissioner's deficiency determination, *as redetermined* by the Tax Court and concurred in by the Court of Appeals, is arbitrary or excessive.

CONCLUSION

The decision below is correct. There is no conflict, and no occasion for further review. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1951.

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[2] See also n. 1, p. 6 *supra*.

APPENDIX

Internal Revenue Code:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

* * * * *

[26 U. S. C. 1946 ed., Sec. 22.]

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. [26 U. S. C. 1946 ed., Sec. 181.]

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b). [26 U. S. C. 1946 ed., Sec. 182.]

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

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[26 U. S. C. 1946 ed., Sec. 3797.]

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.22 (a)–1. *What included in gross income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *.

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